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Recording Date – December 11, 2017
Recording Availability – October 12, 2018

Meeting Location	Date	Time	Topic
King County Bar Association 1200 Fifth Avenue - Suite 700 Seattle, WA	**Monday, December 11, 2017**	12:00 PM to 1:15 PM	Pro Bono Appellate Practice

AGENDA

12:00 PM Introduction

12:10 PM Presentation: 'Pro Bono Appellate Practice', by Leonard Feldman, Peterson Wampold Rosato Feldman & Luna; Jim Lobsenz, Carney Badley Spellman, P.S.; Elizabeth Ford, Fair Work Center

- RPC 6.1 and lawyers' professional responsibility to pro bono publico service
- Statistics on unmet civil legal needs in Washington and across the nation
- The Ninth Circuit Civil Pro Bono Program
- Public interest and criminal pro bono practice

1:15 PM Adjourn

SPEAKER BIOGRAPHY

Leonard Feldman, Peterson Wampold Rosato Feldman & Luna – Leonard Feldman is a partner at Peterson Wampold Rosato Feldman & Luna, where he focuses on state and federal appeals. Mr. Feldman attended the University of Washington, where he graduated summa cum laude in Psychology, and Harvard Law School, where he was twice awarded the Sears Prize (given to the top two students on the basis of grades) and graduated magna cum laude in 1991. He then worked as a judicial law clerk for Ninth Circuit Judge Jerome Farris. Since completing his Ninth Circuit clerkship, Leonard has specialized in appellate practice before the Ninth Circuit and the Washington appellate courts. Leonard is a member of and was previously Chair of the King County Bar Association's Appellate Section, is a member of the Washington Appellate Lawyers Association, and is currently a District Coordinator for the Ninth Circuit Pro Bono Program and a member of the Ninth Circuit's mentor program. In 2006, Mr. Feldman received the Washington Bar Association's Pro Bono Award for his work in appeals that raise important

civil rights issues. He is also a frequent writer and speaker on topics relating to appellate practice. Among other articles, he has co-authored three articles with Washington Court of Appeals Judge Stephen Dwyer regarding appellate brief writing, oral argument, and discretionary review.

Jim Lobsenz, Carney Badley Spellman, P.S. – Jim Lobsenz is a shareholder at Carney Badley Spellman, P.S. since 1991. Jim practices civil rights and criminal defense law. He clerked for Justice Mathew O. Tobriner of the California Supreme Court and for Chief Justice Vincent L. McKusick of the Supreme Judicial Court of Maine. An elected fellow of the American Academy of Appellate Lawyers, he has argued over 25 cases in the Washington Supreme Court. Over the past 15 years he has taught courses on freedom of speech, constitutional law, and civil rights litigation as an adjunct professor at Seattle University School of Law. He has received the William O. Douglas Award, given by the Washington Association of Criminal Defense Attorneys, in recognition of lifetime achievement and dedication to the defense of accused persons. He is also the recipient of the ACLU's Civil Libertarian Award and the United Nations Association's Human Rights Day Award.

Elizabeth Ford, Fair Work Center – Elizabeth Ford is the Legal Director for the Fair Work Center and a Distinguished Practitioner in Residence at Seattle University School of Law. Before beginning her teaching career, she practiced labor and employment law in Seattle for 20 years, representing unions and plaintiffs in employment cases. An experienced clinical legal educator, she developed and taught the Mediation Clinic at SU as well as the current Workers' Rights Clinic offered at both Seattle University and UW Law. She has also taught Labor Law, Negotiation, Dispute Resolution, Collective Bargaining, and Legal Writing at SU and UW Schools of Law and served as the Assistant Dean at UW Law. She founded the Fair Work Legal Clinic in 2016 as a partnership among SU, UW, KCBA, and the Fair Work Center.

HOW DO I EARN CREDIT FOR SELF-STUDY OR AUDIO/VISUAL (A/V) COURSES?

For pre-recorded A/V (self-study) programs, although the sponsor should apply for accreditation, **lawyers need to report the credits earned for taking the course.**

To add an approved course to your roster, follow the procedures below:

- Go to the "mywsba" website at www.mywsba.org/.
- Log in.
- Click on the "Access MCLE" link in the "MCLE Info" box on your home profile page.
- Click on "Add Activity." Search to find the approved course in our system. (See search suggestions on the screen.)

Adding a Recorded Course

Select Recorded Course from the Add New Activity screen.

This will prompt you to search for the activity in case the activity has already been accredited in the MCLE system.

You can search by Activity ID or by specific Activity Details. For the Activity Details search, you can use keywords for the title, sponsor name and date.

After entering your search criteria and selecting Search at the bottom of the screen, a list of possible activities will be provided.

You can select the correct one by clicking the Activity ID. This will take you to the specific activity. Entered the date(s) on which you began and ending viewing this recorded activity.

Then claim the correct credits for which you attended this activity in the Credits Claimed fields and click the Submit button at the bottom of the page.

You will receive a confirmation message at the top of your screen stating, “The activity has been added to your roster.

RPC 6.1
PRO BONO PUBLICO SERVICE

Every lawyer has a professional responsibility to assist in the provision of legal services to those unable to pay. A lawyer should aspire to render at least thirty (30) hours of pro bono publico service per year. In fulfilling this responsibility, the lawyers should:

(a) provide legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civil, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

(b) provide pro bono publico service through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, or charitable, religious, civil, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate:

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

Pro bono publico service may be reported annually on a form provided by the WSBA. A lawyer rendering a minimum of fifty (50) hours of pro bono publico service shall receive commendation for such service from the WSBA.

[Originally effective September 1, 1985; amended effective September 1, 2006.]

Comment

[1] [Washington revision] Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. It is recognized that in some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, at a minimum, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.

[2] [Washington revision] Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means or organizations primarily representing such persons. The variety of these activities should facilitate participation by government lawyers, even when restrictions may exist on their engaging in the outside practice of law.

[3] [Washington revision] Persons eligible for legal services under paragraphs (a)(1) are those who qualify for services provided by a qualified legal services provider (see Washington Comment [14]) and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford legal services. Legal services under paragraphs (a)(1) and (2) include those rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[Comment amended effective April 14, 2015.]

[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected, but the award of statutory attorneys' fees in a case originally accepted as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

[5] [Washington revision] A lawyer's responsibility under this Rule can be fulfilled either through the activities described in paragraph (a)(1) and (2) or in a variety of ways as set forth in paragraph (b).

[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

[7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Participation in judicare programs and acceptance of court appointments in which the fee is substantially below a lawyer's usual rate are encouraged under this section.

[8] [Washington revision] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving in a volunteer capacity on bar association

committees or on boards of pro bono or legal services programs, taking part in Law Week activities, acting as an uncompensated continuing legal education instructor, an uncompensated mediator or arbitrator and engaging in uncompensated legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that fall within this paragraph.

[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. Nevertheless, there may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided. In addition, at times it may be more feasible to satisfy the pro bono responsibility collectively, as by a firm's aggregate pro bono activities.

[10] [Reserved.]

[11] Law firms should act reasonably to enable and encourage all lawyers in the firm to provide the pro bono legal services called for by this Rule.

[12] The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.

Additional Washington Comments (13 - 16)

[13] Washington's version of this Rule differs from the Model Rule. Washington's Rule 6.1 specifies an aspirational minimum of thirty hours of pro bono publico legal services per year rather than fifty, but provides for presentation of a service recognition award to those lawyers reporting to the WSBA a minimum of fifty hours. Unlike the Model Rule, paragraph (a) of Washington's Rule does not specify that the majority of the pro bono publico legal service hours should be provided without fee or expectation of fee. And Washington's Rule does not include the final paragraph of the Model Rule relating to voluntary contributions of financial support to legal services organizations. The provisions of Rule 6.1 were taken from former Wa shington RPC 6.1 (as amended in 2003).

[14] For purposes of this Rule, a "qualified legal services provider" is a not-for-profit legal services organization whose primary purpose is to provide legal services to low-income clients.

[15] Pro bono publico service does not include services rendered for wages or other compensation by lawyers employed by qualified legal services providers (as that term is defined in Washington Comment [14]), government agencies, or other organizations as part of their employment.

[16] The amount of time spent rendering pro bono publico services should be calculated on the same basis that lawyers calculate their time on billable matters. For example, if time spent traveling to a client meeting or to a court hearing is considered to be part of the time for which a paying client would be billed, it is appropriate to include such time in calculating the number of pro bono publico service hours rendered under this Rule.

[Comments originally effective September 1, 2006.]

United States Court of Appeals for the Ninth Circuit

Pro Bono Program

Table of Contents

PROGRAM OVERVIEW . . . . . -1-

APPEALS SELECTED . . . . . -2-

PROCEDURES FOR APPOINTING COUNSEL . . . . . -4-

DISTRICT VOLUNTEER PANELS . . . . . -5-

LAW SCHOOL CLINIC PARTICIPATION . . . . . -6-

SCOPE OF APPOINTMENT AND ORAL ARGUMENT . . . . . -7-

REIMBURSABLE EXPENSES . . . . . -8-

CONTACT INFORMATION . . . . . -10-

Appendix 1
1993 Resolution No. 3 . . . . . A-1

Appendix 2
Sample Orders A-2

Appendix 3
Sample Representation Letter A-3

PROGRAM OVERVIEW

The Ninth Circuit Court of Appeals established its pro bono program in 1993 to provide pro bono counsel to pro se parties with meritorious or complex appeals, to provide a valuable learning experience to young attorneys and law students, and to assist the court in processing pro se civil appeals more equitably and efficiently.

The program was adopted by the court in June 1993 and has been fully implemented since November 1993. *(See Appendix 1.)* The goal of the program is to provide pro bono counsel to pro se parties in civil appeals in which briefing and argument by counsel would benefit the court's review. All appeals selected for inclusion in the program have been pre-screened by a staff attorney, the appellate commissioner, and/or a panel of judges for a determination of the propriety of its inclusion. Only cases presenting issues of first impression or some complexity, or cases otherwise warranting further briefing and oral argument, are selected for the appointment of counsel under the program. Since the selected appeals are generally more complex than the average pro se case presented by staff attorneys to oral screening panels, counsel is needed to assist the court to ensure that pro se cases receive the same attention as other cases of similar complexity.

The program is based in large part on the cooperation and volunteer efforts of the private bar, and on the court's commitment to providing a valuable learning experience to participating attorneys and law students. Panels of private volunteer attorneys in each district of the circuit are coordinated and maintained by an attorney in each district serving as district coordinator for the program. The court's pro bono coordinator works with and relies heavily upon the district coordinators in locating counsel for each appeal and for recruiting volunteers for the program. With the potential exception of some of the amicus curiae appointments and those appointments specifically for purposes of mediation, the court has committed to hearing oral argument in all cases selected for the program, which should further enhance the experience of participating attorneys and students.

The pro bono program offers attorneys and law students a valuable learning experience while providing pro se litigants with meritorious or complex appeals access to quality representation, and benefits the court in the increased efficiency and effectiveness of its review of such cases.

APPEALS SELECTED

Approximately fifty percent of all new appeals filed in the Ninth Circuit have at least one party who is proceeding pro se. All new pro se civil appeals (including habeas petitions) are reviewed at the outset by court staff for jurisdictional defects and are dismissed early on if no jurisdiction exists. Still others are dismissed for failure to prosecute or otherwise summarily disposed of during the course of the appeal. Many of the remaining pro se appeals (primarily those determined after the completion of briefing by staff and/or judges to meet the criteria set forth in 9th Cir. Rule 34-4 to be submitted without oral argument) are processed on the merits by staff attorneys through presentation to oral screening panels.

The remaining pro se appeals (primarily those determined by staff attorneys or judges to warrant further briefing and/or oral argument) are reviewed for a determination whether counsel should be appointed. Appeals that have been initially referred or submitted to oral screening panels are sometimes considered to be too complex for the oral screening process or require further briefing and/or oral argument for some other reason. These appeals are "kicked" from the screening process by staff attorneys or oral screening panels and referred to the coordinator for inclusion in the program and supplemental briefing. Still other appeals are referred by motions panels or staff attorneys prior to the initial briefing and inventory process on the basis of a motion for appointment of counsel and/or a review of the district court or agency record.

Cases selected for inclusion in the program include a broad range of legal issues. While a significant percentage of the cases are prisoner civil rights appeals or immigration petitions, many other civil cases are included, such as labor and employment cases, discrimination, bankruptcy, social security, Indian law, mining law, contract and civil forfeiture appeals. Direct criminal (and most habeas corpus) appeals are not included in the program because the appellants are entitled to paid counsel under the Criminal Justice Act and because any such appellant proceeding pro se is probably doing so out of choice. However, habeas corpus appeals presenting issues of first impression, complex issues of fact or law, or raising meritorious claims warranting further briefing are selected for inclusion in the program.

Due to the complex and changeable nature of immigration law, the court has posted an immigration law outline on the website to assist attorneys in immigration cases. In addition, pro bono attorneys appointed by the court may request assistance from the Immigrant Legal Resource Center (ILRC), by calling 415/255-9499. (Let them know you are pro bono counsel for a Ninth Circuit petition for review and are seeking mentor assistance.) Links to both the ILRC website and the court's "Immigration Outline" are on the court's website at www.ca9.uscourts.gov/probono.

In summary, program cases are generally (though not exclusively) selected after briefing and inventory have been completed. This allows staff to more fully evaluate the merits of the appeal and allows the court to assure participating counsel that only meritorious or otherwise deserving cases will be selected for the program. One

measure of the usefulness of the court's pre-screening process, and of the success of the program generally, is that the success rate for the pro bono attorneys and law students participating in the program has been approximately 50% (at least partial reversal or other termination favorable to pro bono client) since the inception of the program.

PROCEDURES FOR APPOINTING COUNSEL

Once an order has been filed placing an appeal in the pro bono program, the court's coordinator contacts the district coordinator for the district in which counsel is to be appointed and forwards copies of any briefs or case materials that are not available electronically via Pacer, so that counsel has access to all previous filings in this court as well as the district court or agency record. The district coordinator then locates available counsel, who will have the opportunity to familiarize themselves with the issues on appeal, the history of the case, and the parties involved before committing themselves to the appointment. Pro bono counsel must be a member of the bar of the Ninth Circuit.

If no attorney is available for a given appeal in a given district, the court's coordinator will contact a district coordinator from another district or will solicit a participating law school clinic within the circuit to handle the appeal. Occasionally, attorneys outside the circuit are appointed as pro bono counsel. If a volunteer attorney reviews the briefs and/or other materials and determines that no arguable basis exists for the appeal, the court coordinator will contact the authorizing judges or Commissioner and discuss the propriety of vacating the order selecting the case for the program.

Once willing and available counsel has been located for an appeal, the court's coordinator works with him or her to formulate a mutually acceptable briefing schedule. The court's coordinator will then enter a Clerk's order appointing the attorney as counsel of record and establishing a briefing schedule. The coordinator also sends counsel an email confirming the appointment and setting forth the relevant aspects of the program. Pro bono counsel is advised to send a letter to the client outlining the terms of the representation agreement and to obtain the client's written consent. *(See Appendices 2 and 3 for examples of orders placing a case in the Pro Bono Program, an appointment order, and a sample representation letter.)*

The court's Pro Bono Coordinator will work with appointed counsel in all respects to assist them in substituting into the appeal and to process all further motions in the appeal, including requests for modification of the briefing schedule, motions to withdraw as counsel, and cost reimbursement requests. Where appropriate, counsel may request that the appeal be included in the court's mediation program.

DISTRICT VOLUNTEER PANELS

Each of the districts in the circuit have a district coordinator who recruits volunteer attorneys for the program, maintains the current list of volunteers, and locates individual attorneys to accept specific appointments. The district coordinator is generally the chair of that district's delegation of attorney representatives to the Ninth Circuit Judicial Conference or is someone named by that person. (A list of the district coordinators and their contact information is provided with the attorney sign-up form, which is available on the court's website at www.ca9.uscourts.gov/probono.)

The district coordinators recruit volunteers through a variety of methods. Advertisements or announcements in local bar association newsletters or at local bar events have proved very successful in recruiting volunteers. Word of mouth works well in smaller legal communities. Another important resource is the annual class of new lawyer representatives to the Ninth Circuit Judicial Conference, who can be recruited to volunteer for appointments and/or to recruit their colleagues to do so.

The Ninth Circuit Lawyer Representatives, together with the Ninth Circuit Senior Advisory Board, have made a commitment to participation in the program, both in terms of volunteering to accept appointments and assisting in the recruitment of other volunteer attorneys. The Lawyer Representatives Coordinating Committee and the Senior Advisory Board sponsored a joint resolution urging circuit-wide participation in the program by the private bar, which was adopted by the Ninth Circuit Judicial Conference in August, 1993. *(See Appendix 1.)*

The limited scope of the representation of a litigant on appeal is very attractive as a manageable pro bono commitment. In addition, the commitment to hearing oral argument in these cases, the reimbursement of qualifying expenses and the pre-screening of the appeals selected for the program provide strong incentives for participation. Because of the overwhelming support of and participation in the program circuit-wide, there are more volunteer attorneys than there are cases in the program.

LAW SCHOOL CLINIC PARTICIPATION

The Ninth Circuit has historically worked in cooperation with certain law school clinics in the circuit to appoint law students under the supervision of a professor to represent pro se litigants. Pursuant to 9th Cir. R. 46-4, law students supervised by an attorney admitted to this court may appear on behalf of any client with the written consent of that client. This program began solely as a learning experience for the students without much regard to the need for counsel in specific appeals, but is now an integral part of the pro bono program and includes the same, carefully screened cases selected for the program as those handled by the private bar.

With the expansion of the pro bono program, the court has recruited additional law schools to participate. Cases are sometimes referred to these law schools for appointment either because they have been difficult to place in the district of origin for some reason or because the school has requested a specific number of cases of a particular type.

When a law school is appointed, the same procedures are followed as described above, except that the court's coordinator deals directly with the law school rather than enlisting the aid of a district coordinator. The law school must obtain the written consent of the litigant to representation by a law student under the supervision of a professor. In addition, the student, supervising attorney, and dean must individually certify that the requirements for law student participation are met. ("Requirements for Student Practice" and the requisite consent and certification forms, are available on the court's website at www.ca9.uscourts.gov/forms. Forms must be electronically filed, in the "Forms/Notices/Disclosures" filing category.)

SCOPE OF APPOINTMENT AND ORAL ARGUMENT

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

If circumstances arise that require counsel to withdraw as counsel for appellant, such a motion may be based on any of the established grounds for doing so. A motion to withdraw will not generally be disfavored solely on the basis that it would result in further delay unless such delay would severely prejudice the litigants.

In most cases, every attempt will be made to appoint counsel from the same district in which the appeal will be argued. The court has committed to hearing oral argument in all cases in which pro bono counsel is appointed through the program. *See* 9th Cir. Gen. Order 3.8. (In cases where appointment is for mediation purposes or as amicus curiae, the court may not guarantee briefing or argument. Counsel may withdraw if mediation is not successful.) When counsel is appointed, court staff implement several internal court procedures designed to notify the merits panel of the appeal's inclusion in the program.

REIMBURSABLE EXPENSES

Attorneys appointed by the court to represent pro se appellants pro bono may (but are not required to) seek reimbursement for certain necessary and reasonable costs incurred in their representation. Because the court has limited funds to reimburse eligible costs in these appeals, counsel are requested to consider absorbing some or all of their eligible costs where feasible.

Attorneys' fees and certain costs are available to prevailing pro bono counsel under applicable statutes and rules to the same extent as retained counsel. If you prevail in the Ninth Circuit, you are strongly encouraged to seek reimbursement of qualifying costs from the opposing party under Fed. R. App. P. 39 and accompanying local rules. The court must be reimbursed for any expenses paid by the Pro Bono Program that are subsequently recovered from the opposing party.

Requests for reimbursement of costs must be submitted to the program coordinator and include supporting documentation and receipts. (A reimbursement request form is provided on the court's website at www.ca9.uscourts.gov/probono.) Requested costs may not exceed actual out-of-pocket costs, and the court will not reimburse any portion of attorneys' fees. If you anticipate that you will incur additional costs not listed below for which you will seek reimbursement, you must contact the Pro Bono Coordinator, at (415) 355-8020, before you incur them. All cost reimbursement requests must be approved according to these guidelines unless specific exceptions are made in advance.

Expenses covered by the program include the following:

1. Airfare for travel (within the circuit) to oral argument for one attorney, or if a law school is appointed, for the supervising attorney and one student. **Attorneys must contact the Clerk's Office at (415) 355-7873 to obtain a letter authorizing travel at government expense before making any travel arrangements, and must then use the government travel agent to arrange for airline ticketing.** (These tickets are billed directly to the government.) **Out-of-circuit attorneys must make their own travel arrangements and airfare is not reimbursable.**

2. Other reimbursable expenses related to travel for oral argument include reasonable accommodations where necessary due to distance, reasonable ground transportation to and from the airport, parking, and meals. In many cases, the travel authorization letter can be used to obtain reduced government rates for hotel accommodations and car rentals. The total for all lodging and meal expenses should not exceed government per diem rates for the particular area in which the argument is held. Costs for alcoholic beverages or entertainment are not reimbursable.

3. Miscellaneous reimbursable expenses incurred during the course of representation include the following:

- Photocopying and/or necessary printing costs for briefs and excerpts of record, motions, and a petition for rehearing. (*See* 9th Cir. R. 39-1.2 and 39-1.3.)
- Computer assisted legal research costs, not to exceed $1000.
- PACER fees incurred for accessing the district court record of the case on appeal, not to exceed $1000.
- Documented long-distance telephone toll calls to the client.
- Postage and delivery.

CONTACT INFORMATION

For questions about the program, please contact the pro bono coordinator at:

Probono@ca9.uscourts.gov
(415) 355-8020

Appendix 1
1993 Resolution No. 3

1993 Resolution No. 3

Encourage Ninth Circuit Attorneys to Participate in the Pro Se Representation Project

Submitted by

The Ninth Circuit Lawyer Representatives Coordinating Committee
and
The Ninth Circuit Senior Advisory Board

WHEREAS, the number of appeals filed in the United States Court of Appeals for the Ninth Circuit which involve pro se litigants has reached unprecedented levels; and

WHEREAS, the court of appeals' consideration of complex nonfrivolous pro se appeals would be greatly assisted in many cases by the appointment of pro bono counsel for the litigant;

WHEREAS, the court of appeals is in the process of establishing a comprehensive Pro Se Project to provide for the appointment of pro bono counsel in complex civil appeals where a party is proceeding pro se; and

WHEREAS, the Pro Se Project will depend upon the participation, active involvement, and contribution of the private bar in order to succeed; and

WHEREAS, the Senior Advisory Board has endorsed the project and offered its support for the project's successful implementation; and

WHEREAS, members of the Lawyer Representatives Coordinating Committee have committed themselves to support the proposed Pro Se Project and to assist in coordinating the project in their districts;

NOW, THEREFORE, BE IT RESOLVED THAT:

All lawyer representatives and all other members of the Ninth Circuit bar:

1) Assist the United States Court of Appeals to develop, carry out, and coordinate an effective Pro Se Project to provide counsel in complex, nonfrivolous civil appeals where a party is proceeding pro se; and

2) Become involved with the Pro Se Project in their districts; and

3) Personally encourage their colleagues toward the goal of pro bono representation sufficient to meet the needs of the project.

Statement of Reasons

More than one third of all new appeals filed in the United States Court of Appeals for the Ninth Circuit (2,783 of 7,979 appeals filed in 1992) have at least one party who is proceeding pro se. All new pro se civil appeals are reviewed at the outset by court staff; many of these are dismissed for jurisdictional or procedural defects, or are simple or frivolous appeals disposed of on the merits without the need for assistance of counsel. The remaining pro se appeals are generally more complex and/or meritorious, and require more of the court's time and resources to resolve. Often, the court's consideration of the appeals would be greatly benefitted by the assistance of pro bono counsel to ensure that these pro se appeals receive the same attention as other case of similar complexity.

To this end, the court is in the process of establishing a Pro Se Project by which the court will appoint pro bono counsel in the more complex and meritorious civil pro se appeals, including habeas corpus appeals. To the extent possible, counsel will be appointed in the districts in which the cases arise. The pro bono lawyers in each district will be coordinated by the chair of that district's lawyer representatives (or his or her designee), who will work in conjunction with the court's Coordinating Staff Attorney. The court has committed itself to hear oral argument in all cases in which counsel is appointed through the project. Funds are available, if needed and requested, to reimburse reasonable and necessary out-of-pocket expenses.

The court anticipates, based on available statistics regarding pro se appeals, that over 100 pro se civil appeals each year will warrant the appointment of counsel. The court is planning to enlist the aid of law school clinics throughout the circuit to provide representation in some of these cases, but the court must rely on participation by the private bar for the majority of the appeals. The lawyer Representatives Coordinating Committee and the Senior Advisory Board have pledged their support, and they have begun to solicit the assistance of the private bar.

Appendix 2
Sample Orders

• Placing Case in Program - Not Briefed
• Placing Case in Program - Previously Briefed
• Appointing Counsel

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

[*plaintiff/appellant name*], Plaintiff - Appellant, v. [*defendant/appellee name*], Defendant - Appellee.	No. [*xx-xxxxx*] PRO BONO [*district court case # & district*] OR [*agency/alien #*] ORDER

Before: [*appellate commissioner name*], Appellate Commissioner

Upon review of the record, this court has determined that the appointment of pro bono counsel in this appeal would benefit the court's review. The court by this order expresses no opinion as to the merits of this appeal. The Clerk shall enter an order appointing pro bono counsel to represent appellant for purposes of this appeal only.

Pro bono counsel shall prepare briefing that will be submitted to the judges deciding this appeal, and shall appear at oral argument. The Clerk shall establish a revised briefing schedule. The appeal is stayed pending further order of this court.

If appellant objects to the court's appointment of counsel in this appeal, appellant shall file a written objection within 14 days after the filing date of this order.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

[*plaintiff/appellant name*], Plaintiff - Appellant, v. [*defendant/appellee name*], Defendant - Appellee.	No. [*xx-xxxxx*] PRO BONO [*district court case # & district*] OR [*agency/alien #*] ORDER

Before: [*appellate commissioner name*], Appellate Commissioner

Upon review of the record and the briefing, this court has determined that the appointment of pro bono counsel in this appeal would benefit the court's review. The court by this order expresses no opinion as to the merits of this appeal. The Clerk shall enter an order appointing pro bono counsel to represent appellant for purposes of this appeal only.

Pro bono counsel shall consult with the client to determine whether: (1) replacement briefing; or (2) supplemental briefing and appellant's previously filed brief will be submitted to the judges deciding this appeal. The court encourages the submission of replacement briefing rather than supplemental briefing. Both parties shall state on the cover pages of their briefs whether they are replacement briefs or supplemental briefs. Pro bono counsel shall appear at oral argument. The Clerk shall establish a revised briefing schedule. The appeal is stayed pending further order of this court.

If appellant objects to the court's appointment of counsel in this appeal, appellant shall file a written objection within 14 days after the filing date of this order.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

[*plaintiff/appellant name*], Plaintiff - Appellant, v. [*defendant/appellee name*], Defendant - Appellee.	No. [*xx-xxxxx*] PRO BONO [*district court case # & district*] OR [*agency/alien #*] ORDER

Pursuant to this court's [*date*] order appointing pro bono counsel, [*pro bono attorney*], Esq., is hereby appointed to represent appellant for purposes of this appeal only. The Clerk shall amend the record to reflect that [*pro bono attorney*], Esq. of [*law firm name/address/phone*], is pro bono counsel of record for appellant.

Within 14 days after the date of this order, pro bono counsel shall register on the court's website for electronic filing/noticing with the Case Management/ Electronic Case Files (CM/ECF) system, if counsel has not already done so.

Briefing shall proceed as follows: the opening brief is due [*date 1*]; the answering brief is due [*date 2*]; and the optional reply brief is due within 14 days after service of the answering brief.

For the Court:

MOLLY C. DWYER
Clerk of the Court

By: [*deputy clerk name*]
Deputy Clerk

Appendix 3
Sample Representation Letter

[*Firm's Letterhead*]

[*date*]

Re: CA No. [*appeal number and title*]

Dear [*Client*]:

We are pleased to accept the opportunity to represent you with regard to the above-referenced appeal. The purpose of this letter is to set forth the basic terms upon which we will represent you, including the anticipated scope of our services and the nature of our pro bono representation.

1. Scope of Engagement. The undersigned have been appointed as pro bono counsel by the United States Court of Appeals for the Ninth Circuit (the "Court") to represent you in the above referenced appeal. Our appointment is limited and includes only the handling of this appeal and the drafting of a petition for rehearing if requested by you, but does not include the preparation and filing of a petition for certiorari in the Supreme Court or any other proceedings in any other court.

2. Pro bono Representation. Please be advised that we are representing you as participants in the Court's pro bono project. We will seek reimbursement from the Court for reasonable and necessary costs incurred in our representation of you in the appeal. In addition, we may seek an award of statutory attorney's fees from appellees if appropriate. You will not be responsible for any attorney's fees or costs incurred in our representation of you.

3. Errors and Omissions Coverage. Under California law, all lawyers are required to advise their clients whether they maintain errors and omissions insurance coverage applicable to the services to be rendered. We confirm that we do maintain such insurance coverage applicable to the services which we anticipate rendering in connection with this matter.

4. Other Issues. For all engagements undertaken by our firm, our firm performs a conflict check, i.e., a review of its records to determine whether or not the firm is currently involved in the engagement. We have performed the requisite conflict check and wish to advise you of its results. The check revealed that a former principal of our law firm, while still a principal of our firm, filled out paperwork on February 24, 1990, indicating that he would be representing the management of ABC Corp. in conjunction with a corporate acquisition. Our records indicate that such representation was never undertaken. We do not believe that a conflict of interest exists with regard to our representation of you in this matter; however, we make the foregoing disclosure so that you may have all relevant facts before you in determining whether or not to go forward with this engagement. Should we learn any additional information that leads us to believe that a potential or actual conflict of interest does exist, we will of course inform you promptly of that fact in writing.

For best results, we look forward to a high degree of cooperation from you. Although we will endeavor to achieve a satisfactory result and to keep you apprised of the status of these matters, no guarantees of any kind can be made concerning the outcome of any litigation, or of any other legal services in which the voluntary consent or action of another party is involved.

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While we would prefer to confirm the terms of our engagement by a less formal method than a written letter such as this, in certain instances attorneys are required by California law or firm policy to memorialize these matters in writing. Accordingly, we ask that you review this letter carefully and, if it is acceptable to you, please so indicate by returning a signed copy at your earliest convenience. Enclosed is an additional copy of this letter for your files.

We look forward to working with you on this engagement. Please do not hesitate to call either of us if you have any questions.

Very truly yours,

ACCEPTED AND AGREED:

_____ Dated: _____

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