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Appellate Insight

Pro Bono Opportunities in the Appellate Courts

Lawyers are privileged members of society. As lawyers, we have a professional obligation to do pro bono work. The word “pro bono” is short for “pro bono publico,” which means for the good of the public. California Business and Professions Code section 6068 lists the duties of California attorneys and includes “never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.” Cal. Bus. & Prof. Code § 6068(h). Former California Supreme Court Chief Justice Ronald M George, once stated that “providing pro bono service is an important responsibility and obligation that attaches to the privilege of being an attorney.”

Today in these challenging economic times the need for pro bono work to help the poor and disadvantaged is especially acute. It is important for lawyers to take our professional obligation seriously and take on pro bono matters to increase access to justice and to assist our budget-strapped courts. There are countless opportunities to be of service (*see, e.g.,* www.probono.net/CA). This article discusses two pro bono opportunities: (1) the Ninth Circuit Court of Appeals’ pro bono program; and (2) the Appellate Mediation Program at the California Court of Appeal, Third Appellate District.

The Ninth Circuit’s Pro Bono Program

My first experience with the Ninth Circuit’s Pro Bono Program was in 1997. As a third year attorney, I argued my first appeal, a civil forfeiture case, at the Ninth Circuit. The Ninth Circuit’s pro bono program provided me with a chance to be of service to an indigent litigant and an incredible professional opportunity.

In 1993, the Ninth Circuit started its pro bono program. The program enables attorneys to volunteer to represent pro se litigants in meritorious or complex Ninth Circuit appeals. According to the Ninth Circuit’s Pro Bono Program Handbook, “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.” Today the Ninth Circuit pro bono program appoints counsel in approximately 160 cases each year.

Many different types of civil cases are included in the Ninth Circuit’s program. The majority of the appeals are prisoner civil rights appeals or immigration petitions. However, some cases in the program involve other types of legal issues including employment, bankruptcy, social security, Indian law, and civil forfeiture. With some

minor exceptions, the Ninth Circuit has committed to hearing oral argument in all cases selected for the pro bono program.

Once an appeal has been selected for the pro bono program, the Court's pro bono coordinator contacts the pro bono district coordinator for the federal district court from which the appeal originated. The district coordinator then locates available counsel. Prior to committing to an appeal, pro bono counsel can review the record and history of the case. Once counsel accepts the appeal, the Court's pro bono coordinator works with the attorney to establish a briefing schedule. The Court then enters an order appointing the attorney as counsel of record and establishing a briefing schedule.

To be eligible to be appointed as pro bono counsel a lawyer must be admitted to practice in the Ninth Circuit. Each of the federal districts within the Ninth Circuit has a district coordinator who recruits volunteer attorneys for the program and maintains the current list of volunteers. To get on the volunteer list, attorneys must submit a short application that can be found at www.ca9.uscourts.gov/probono. At this time, there are more volunteer attorneys in the program than there are cases. Thus, attorneys may have to wait for over a year to be appointed to an appeal.

Serving as a Volunteer Mediator

The Third Appellate District also provides an opportunity for attorneys to be of service to the appellate courts. In 2006, the Court instituted its Appellate Mediation Program "to enable efficient case management and more expeditious resolution of civil appeals." The program relies upon volunteer attorneys to serve as mediators.

Attorneys interested in volunteering must fill out an application and submit it to the Appellate Mediation Program. In order to become a mediator, the Court requires each attorney to attend an extensive free training (approximately 30 hours). The training is normally provided every other year. The Appellate Mediation Program anticipates offering the next mediation training in the spring of 2014.

In consideration for providing the training, each mediator must agree to accept up to four mediation referrals from the Appellate Mediation Program. The first four hours of all mediations referred by the Court must be provided by the mediator on a pro bono basis. Any mediation time exceeding four hours may, with agreement of the parties, be charged at the mediator's hourly rate, paid by the parties. More information on the mediation program can be found on the Court's website at <http://www.courts.ca.gov/3140.htm>.

Conclusion

Pro bono work not only provides desperately needed legal services to the disadvantaged, but it also offers rewarding opportunities for professional and personal growth. In addition, it helps the courts operate more efficiently and effectively. It is incumbent upon all lawyers, including appellate lawyers, to recognize their profound responsibility to use their training, skills and experience to provide legal services to those in our community that otherwise would be unable to afford legal representation.

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