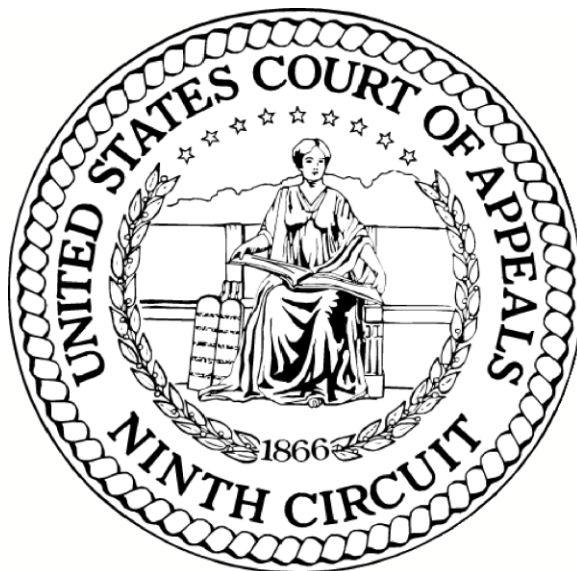


United States Court of Appeals for the Ninth Circuit



Pro Bono Program

updated **2019**

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PROGRAM OVERVIEW

The Ninth Circuit Court of Appeals established its pro bono program in 1993 to offer quality representation to pro se parties with meritorious or complex appeals, to provide valuable hands-on experience to law students and new attorneys, and to enhance the court's ability to process pro se appeals equitably and efficiently. See Appendix 1.

Appeals selected for inclusion in the program have been pre-screened by a staff attorney and/or a panel of judges. Only cases presenting issues of first impression or some complexity, or cases otherwise warranting further briefing or oral argument, are chosen for appointment of pro bono counsel.

Each district in the circuit has a coordinator who recruits and maintains a list of volunteer attorneys, and works with the court's pro bono coordinator to locate counsel for each appeal placed in the program. With the exception of some amicus curiae and mediation-only appointments, the court has committed to hearing oral argument in all cases selected for the program.

CASE SELECTION

About fifty percent of the cases filed in the Ninth Circuit each year have at least one party who is proceeding without representation. Many new appeals are dismissed early on for lack of jurisdiction or failure to comply with court orders, and other appeals are decided on the merits via motion for summary disposition. The remaining pro se cases are evaluated by staff and sometimes judges to determine whether they are potentially meritorious particularly complex and would benefit from briefing and argument by counsel.

When good candidates are identified before briefing, either on motion for appointment of counsel or on the court's own assessment, they are placed in the program right away. It's often not until a case has been briefed by the pro se that the significance of the issues comes to light and a case is placed in the pro bono program for rebriefing. This can happen either before or after a staff attorney prepares a case and submits it to an oral or written screening panel for decision. When a screening panel decides to reroute a case to the argument track, it's called "kicking" and if the case is pro se, counsel will be appointed except in rare circumstances.

The majority of cases placed in the program are prisoner civil rights appeals or immigration petitions for review, though a variety of other civil cases are also included (e.g. labor and employment, discrimination, bankruptcy, and Indian law). 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. On occasion a habeas appeal that is particularly complex or raises issues of first impression will be included.

In sum, the court tries to ensure that only meritorious or otherwise deserving cases are selected for the program. One measure of success for the pre-screening process and the program generally, is that participating attorneys and law students have achieved at least partial reversal or other favorable termination for their client in about 50% of cases since the program began.

APPOINTMENT PROCESS

After the court issues an order placing a case in the pro bono program, the court's coordinator contacts the appropriate district coordinator and forwards copies of any relevant case materials not available via Pacer, so that counsel has access to all filings in this court as well as the district court or agency. The district coordinator then locates available counsel and allows them to review the case materials before committing to the appointment. 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 coordinator for another district or a participating law school clinic to handle the appeal. If a volunteer attorney reviews the briefs or other materials and determines that no arguable basis exists for the appeal, the court coordinator will contact the authorizing judges or staff to discuss whether to vacate the order placing the case in the program.

Once willing counsel is located, the court coordinator issues a clerk order appointing the attorney as counsel of record and setting a briefing schedule that is mutually acceptable to counsel and the court. The coordinator also emails counsel to confirm the appointment, set forth the key elements of the program, and advise that pro bono counsel send the client a letter with the terms of representation and obtain the client's written consent. See

Appendix 2 (sample orders placing case in pro bono program and appointing counsel); Appendix 3 (sample representation letter).

Following appointment, the court's pro bono coordinator is available to assist counsel as needed, in substituting into the appeal, requesting modification of the briefing schedule, moving to withdraw as counsel, or seeking reimbursement for costs. Where appropriate, counsel may request that the appeal be included in the court's mediation program.

VOLUNTEER ATTORNEYS

The circuit has four district coordinators who recruit volunteer attorneys for the program, maintain the current regional list of volunteers, and locate individual attorneys to accept specific appointments. A list of the district coordinators and their contact information is available at www.ca9.uscourts.gov/probono. The district coordinators recruit volunteers through various means including local bar associations, word of mouth, and lawyer representatives to the Ninth Circuit Judicial Conference.

Volunteer attorneys are drawn to the program for several reasons: (1) the scope of the appointment is limited to representing a litigant on appeal, (2) the court has committed to hearing oral argument in all pro bono cases, (3) qualifying expenses can be reimbursed if needed, and (4) cases are pre-screened to ensure they are suitable for pro bono appointment. There are more volunteer attorneys than there are cases in the program.

LAW SCHOOL CLINICS

The Ninth Circuit has coordinated with many law school clinics over the years to appoint students to represent litigants on appeal. In clinic cases, the court coordinator works directly with the law school rather than a district coordinator. Cases are pre-screened for the clinics program to ensure they have some merit or complexity, and to meet the subject area expertise of the clinic.

The law school must obtain the written consent of the litigant to be represented by a law student under the supervision of a professor. See 9th Cir. R. 46-4. The student, supervising attorney, and dean must also individually certify that the requirements for law student participation are met. Student Practice Requirements and Forms are available at

www.ca9.uscourts.gov/forms. Forms must be electronically filed, in the "Forms/Notices/Disclosures" filing category.

SCOPE OF APPOINTMENT

When the order of appointment states that counsel will represent the appellant "for the purposes of this appeal only," counsel is expected to handle the merits of the appeal and a petition for rehearing, if appropriate, in this court. Counsel is not expected to seek further review in the Supreme Court or any other forum, absent a specific commitment to the court or agreement with the client.

A motion to withdraw as counsel may be based on any of the established grounds for withdrawal and is not disfavored solely because it would cause delay, unless the delay would severely prejudice the litigants.

The court will try to locate counsel in the district where the appeal will be argued. The court will hear oral argument in cases in which pro bono counsel is appointed through the program. See 9th Cir. Gen. Order 3.7. If an appointment is for mediation purposes or as amicus curiae, the court does not guarantee briefing or argument, and counsel may withdraw if mediation is not successful.

REIMBURSABLE EXPENSES

Pro bono attorneys appointed by the court may seek reimbursement for certain costs described below, but not for attorney fees. Given the court's limited funds to cover eligible costs in pro bono appeals, counsel is requested to absorb their costs when 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. Attorneys who prevail in the Ninth Circuit are encouraged to seek reimbursement for qualifying costs from the opposing party. See Fed. R. App. P. 39 & related local rules. Attorneys must reimburse the court for any expenses paid by the Pro Bono Program that are later recovered from the opposing party.

A blank reimbursement request form is available at www.ca9.uscourts.gov/probono; the completed form must be submitted to

the program coordinator by email: ProBono@ca9.uscourts.gov. Any request for costs must include supporting documentation and receipts and may not exceed actual out-of-pocket costs.

Cost requests will be evaluated under the guidelines below. Costs that are not listed will not be reimbursed unless you contact the Pro Bono Coordinator (email: ProBono@ca9.uscourts.gov) and get approval in advance.

Covered expenses:

1. Airfare is not reimbursable but may be covered for travel within the circuit, to oral argument, for one attorney (or for law schools - one attorney and one student) *if* the attorney gets a *letter authorizing travel* at government expense **and** uses the *government travel agent* to book flights that are billed directly to the government. The Clerk will provide counsel with information about how to obtain a travel authorization letter when the appeal is scheduled for argument. Out-of-circuit attorneys must make their own travel arrangements and pay for their own airfare.

Other expenses related to travel for oral argument may be reimbursed, including reasonable lodging when distance requires an overnight, reasonable ground transportation to and from the airport, parking, and meals. In many cases, the travel authorization letter can be used to get reduced government rates for hotels and car rentals. The total for all lodging and meal expenses should not exceed government per diem rates for the locality where argument is held. Government per diem rates for lodging, meals, and mileage are available at <http://www.gsa.gov/>. Costs for alcoholic beverages and entertainment are not reimbursable.

2. Miscellaneous expenses related to representation may be reimbursed, including:
 - Photocopy or printing costs for briefs, excerpts of record, motions, and petitions for rehearing. See 9th Cir. R. 39-1.2 and 39-1.3.
 - Computer assisted legal research costs, up to \$1000.
 - PACER fees to access the district court record, up to \$1000.
 - Documented long-distance telephone toll calls to the client.
 - Postage and delivery.

Appendix 1

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

Order Placing Unbriefed Case in Program:

The court has determined that appointment of pro bono counsel would benefit the court's review in this case. If appellant objects to the appointment of counsel, appellant shall file a written objection within 14 days of this order.

Absent objection from the appellant, and upon locating suitable counsel, the clerk will enter an order appointing counsel to represent appellant for purposes of this appeal only. The clerk will also set a new briefing schedule.

Order Placing Briefed Case in Program:

The court has determined that appointment of pro bono counsel would benefit the court's review in this case. If appellant objects to the appointment of counsel, appellant shall file a written objection within 14 days of this order.

Absent objection from the appellant, and upon locating suitable counsel, the clerk will enter an order appointing counsel to represent appellant for purposes of this appeal only. The clerk will also set a new briefing schedule. Pro bono counsel is encouraged, with the consent of the client, to file replacement briefing, rather supplemental briefing.

Order Appointing Counsel:

Pursuant to this court's [DATE] order, [ATTORNEY], Esq., is hereby appointed to represent appellant for purposes of this appeal only. The clerk will amend the docket to reflect that [ATTORNEY], Esq. of [ORG/ADDRESS/TEL], 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]; the answering brief is due [DATE]; and the optional reply brief is due within 21 days after service of the answering brief.

Appendix 3

[*Firm's Letterhead*]

[*date*]

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

Dear [*Client*]:

We are pleased to represent you in 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 a petition for rehearing if you so request but does not include the 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 may seek reimbursement from the Court for reasonable and necessary costs incurred in our representation of you in the appeal. We may also seek 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 for 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, we perform a conflict check, i.e., a review of our records to determine whether 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.

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: _____