
Why I Support Appellate Pro Bono Services (and Why You Should Too)

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INTRODUCTION

Many great organizations work to make legal services more accessible to Texans who cannot afford to pay for them. These groups match pro se individuals with lawyers willing to volunteer their time to help solve problems that would otherwise go unaddressed. Members of the bar often help Texans in a variety of contexts. In the courtroom and out, lawyers frequently donate their time and services to provide access to the judicial system for lower income Texans. Yet, despite the substantial number of hours of free or discounted legal services donated annually by volunteer lawyers, the needs of far too many Texans go unanswered—four-fifths of all those financially eligible for volunteer legal services are turned away for want of enough resources to help them.

Low-income Texans face litigation and nonlitigation matters of tremendous personal significance. Often a parent's right to child custody or visitation, or a family's right to remain in housing in the face of a dispute with a landlord hang in the balance. Without the assistance of lawyers, all too many Texans are denied meaningful access to their day in court. And when a case involves litigation, often the need for assistance does not end with the entry of a trial court

¹ On behalf of the Appellate Section, the Editors wish to thank Mike for his outstanding service as Co-Chair of the Section's Pro Bono committee, as coordinator for the Section's ad hoc program, and as the Section's liaison to the Texas Supreme Court's Pro Bono Pilot program.

judgment. Not surprisingly, appellate lawyers see these needs manifest as cases move from the trial courts to the courts of appeals. That is where appellate pro-bono services come into play.

I. Pro Bono Services in the Courts of Appeals

Over the years, the Appellate Section of the State Bar of Texas has taken a proactive stance to help match volunteer attorneys with parties who want to appeal a trial court ruling but cannot afford to hire appellate lawyers. The Appellate Section has worked with various courts of appeals creating programs to identify cases that may be suitable for pro bono assistance and to match volunteer lawyers with those who qualify for assistance. The Appellate Section's efforts have benefitted from the input of the participating courts and their staffs in discussing ideas for effective pro bono programs, incentivizing lawyers to volunteer, and helping identify cases that may be eligible for placement. And members of the Appellate Section have been generous with their time, volunteering to serve on screening committees or to serve as counsel on appeal.

Pro bono programs are designed to identify cases involving parties who are not represented by counsel. In those cases, the pro se parties are identified by their docketing statements and then asked whether they are interested in participating in the program. If a party elects to do so, the clerk of the court notifies the pro bono coordinator for the program, who then screens the applicant and the case for eligibility. When a party is eligible, the coordinator provides basic public information about the case to a pool of volunteers. Volunteers interested in handling the case notify the coordinator and the pro se applicant is then matched with counsel. If no volunteer is found, the party proceeds on a pro se basis. Since its inception, the appellate court pro bono programs have matched hundreds of Texans with volunteer lawyers who have donated tens of thousands of hours of services at no charge.

Many volunteers come from “big firm” practices and routinely handle appeals involving business disputes among clients who can afford to pay for the record on appeal and for countless hours spent researching and writing briefs and preparing for oral argument. Their eyes are often opened in the course of handling pro bono appeals, where cases may involve life-altering issues for the parties involved. And while the financial stakes may not be as high as those raised in multi-million dollar contract disputes, the issues are no less important to the pro se clients who otherwise would not have meaningful access to the appellate courts without assistance from a volunteer. Barring the pro bono programs, these parties, often single parents working several jobs and trying to raise children, would be left to have perhaps the most important issues in their lives decided without the benefit of counsel in highly technical forums.

To date, pro bono appellate programs have been established in the most populous appellate districts in the state. In fact, 70% of all civil appeals perfected in 2011 were filed in appellate courts with pro bono programs or with programs in the works. The Appellate Section is proud of such statewide coverage, made possible by participating local bar groups, state-wide volunteers, and the participating courts.

But 70% coverage means that 30% of appeals are taken in courts that do not have established pro bono programs. This reality for low income Texans means that a parent contesting a child-custody ruling in one part of Texas may not have access to help from an appellate lawyer that would be readily available to a similarly situated parent in another part of the state.

The Appellate Section employs an “ad hoc” pro bono program to help fill this gap. This program attempts to match pro se litigants with appeals in nonparticipating appellate courts with volunteers from a statewide pool of volunteers.

Many appeals have been placed through this program, but because it operates ad-hoc, oftentimes pro se litigants do not know about it. Unlike the more formal programs, no mechanism exists to identify the availability of the program when parties file their appeals. During the upcoming year, the Appellate Section will work to make it easier for courts without pro bono programs to participate in the ad hoc program, so that a system can be put in place to provide appellate pro bono access to all pro se Texas litigants regardless of which court of appeals may be involved.

II. Pro Bono Services in the Supreme Court of Texas

The need for pro bono counsel does not necessarily end once an appellate court issues its decision in a case. Cases are often dismissed in the courts of appeals because parties cannot afford the costs associated with preparing a record (paying to have a transcript of a trial or hearing prepared or to have pleadings filed with the trial court copied and compiled) and fail to qualify as “indigent” litigants entitled to a record at no cost. Or pro se appeals may be dismissed on other procedural grounds involving briefing or the presentation of clearly articulated errors to the courts. Pro se parties intent on obtaining review frequently try to challenge such dismissals by filing petitions in the Texas Supreme Court. But the reality is that not every case can be accepted for review by that court, leaving many without recourse for additional review.

Several years ago, the Texas Supreme Court, in conjunction with the Appellate Section, established a pilot program to help match qualified pro se litigants with volunteer appellate counsel. Under the program, when the court requests briefing on the merits in a case involving a pro se litigant, the court informs the parties of its pilot program. If the pro se party is interested in participating and qualifies, the program liaison will then work to find a volunteer appellate lawyer to serve as counsel in the Texas Supreme Court. The program benefits not only the pro se parties, by providing

them access to volunteer lawyers, but also provides a service to the court, by providing professional briefing on what may be issues of great significance to Texas law and to the citizens of Texas. Recent examples include matching counsel with a party whose appeal was dismissed based upon the failure to file a record, a record the party could not afford as an indigent. Not every pro se case qualifies for inclusion in the program, and there is no guarantee that a volunteer will be found in every qualifying case. Even so, the program has been a great success in terms of helping frame important issues for the court's review.

The efforts of the Appellate Section and its members, local bar groups, the Texas courts of appeals, and the Texas Supreme Court have been laudable in providing assistance to those who cannot afford appellate counsel. But gaps still exist affecting the ability of those who cannot afford a lawyer to obtain access to full review on appeal. During the first three months of 2012, over one-fifth of all new cases filed in the Texas Supreme Court were brought by pro se parties, without the benefits of counsel (and this statistic only focuses on pro se petitioners—it does not account for cases in which a represented party seeks review of a judgment in favor of a pro se respondent). As noted, the cases brought by pro se petitioners frequently raise issues of the utmost importance to individual Texans, such as child custody/visitation, the loss of a family home, or the denial of disability benefits. And these parties are often forced to litigate on their own in a forum where the odds are significantly against receiving review, even when sought by veteran lawyers.

The first hurdle a party faces before becoming eligible to participate in the Supreme Court Pro Bono Pilot Program is the preparation of a petition for review that will garner enough interest by the court to generate a request briefing on the merits. The Texas Rules of Appellate Procedure set forth the format for a petition and what must be included, but at times

even seasoned trial lawyers have difficulty in preparing petitions that comply with all the rules.

To help pro se litigants pass this hurdle, the Texas Supreme Court, in coordination with the Appellate Section, has prepared an instruction booklet for use by pro se litigants explaining what must be included in a petition, what a petition looks like, and how it is organized. The instructions accompany a set of templates available online for use in preparing a petition. These templates set forth the requirements for a petition for review, and provide a tool for the pro se litigant to organize and present issues to the court. They are designed as a resource for the inevitable portion of cases filed with the court by parties who have attempted unsuccessfully to retain appellate counsel or who could not afford to do so. It is hoped that these templates and instructions will allow pro se litigants to focus on framing issues that the court will deem significant enough to warrant briefing on the merits, rather than becoming overwhelmed by the mechanics for preparing a compliant brief.

III. Why Appellate Pro Bono is Important to Me

Over the years I have provided pro bono services through bar-related organizations, serving as co-chair of the Appellate Section's Pro Bono committee, as coordinator for the Section's ad hoc program, and as the liaison for the Supreme Court Pro Bono Pilot program. I served as faculty for an appellate-advocacy program designed for legal-aid providers, and I have represented the Appellate Section at programs advocating for legal aid. And beyond providing these administrative services, I have also served as pro bono counsel in various appeals in the Third Court of Appeals as well as before the Supreme Court.

My appellate pro bono experiences have led me to the following three observations. First, providing pro bono legal services is personally rewarding. The clients I have represented have been truly grateful to have someone stand

beside them, listening and advocating for their cause. Only recently, an applicant called me in tears to thank me for placing her case with a volunteer, a call I will surely remember for years.

Second, appellate pro bono not only serves the legal needs of individual litigants, but also confirms the legitimacy of the appellate process. When parties lack access to meaningful appellate review for want of counsel, it may appear to them as though the system is stacked against them. The dignity of the process is diminished when parties feel they lose simply because they could not present their case and be heard. But even a losing client can walk away with more faith in the system when they feel they have had their day in court represented by volunteer counsel.

Third, I have come to realize how great a need exists for appellate pro bono services. As noted, almost a quarter of all cases brought before the Texas Supreme Court are brought by pro se parties, without the benefit of assistance of counsel. The vast majority appear pro se not by choice but out of necessity, not having the means to retain and pay an attorney to prepare a petition for review. Indeed, as liaison for the Supreme Court's Pro Bono Pilot Program, I receive numerous inquiries from parties whose efforts to retain appellate counsel have gone unsatisfied and who are desperately seeking pro bono assistance at the petition stage. I routinely reply that the Texas Supreme Court's Pilot Program is designed to provide assistance at the merits-briefing stage, but not at the petition stage. But the reality is that in the absence of a coherent petition that clearly identifies important issues, most pro se petitions will never make it to the point where they can receive assistance under that program. It is hoped that the template initiative will help parties position their cases so that they can obtain assistance through the court's pilot program. But a need will always exist for assistance, even at the petition

stage, and even though no formal system exists to match counsel with potential petitioners.

IV. And Why it Should be Important to You

As noted, the Appellate Section continues to explore new ideas for expanding pro bono services to all Texas courts of appeals and for improving existing programs. We are working on plans to make our statewide pool of volunteers accessible to pro se parties in all state courts of appeals, without regard to geography. And we are also considering ideas to expand the services our volunteers provide in matters before the Texas Supreme Court.

But efforts to expand current programs are constrained by the number of volunteers available to match with pro se parties. Our appellate-court programs currently struggle to avoid overwhelming our pool of volunteers, with many lawyers taking case after case. And an expansion of current programs to other courts, without additional volunteers, would prove to be an accomplishment on paper alone. Without more volunteers, any expanded program could not serve the needs of all new pro se participants, and we would still have to turn away those in need.

Any pro bono services provided by Texas attorneys should be applauded. As a young lawyer interested in developing an appellate practice I recall wanting to volunteer my time, but struggled to find opportunities that would allow me to develop professionally as well. Those options exist through the Appellate Section's pro bono programs for the aspiring appellate lawyer as well as the appellate veterans. And through the cooperation of the participating courts, pro bono cases may provide opportunities to receive oral arguments that are otherwise hard to come by.

CONCLUSION

The stakes for the individuals are high and the needs are great. Our programs can continue to succeed and expand with

your help. I invite you to visit the pro bono page of the Appellate Section's website (www.tex-app.org/probono.php) and add your name to the ranks of volunteers willing to assist with appellate matters so we can reach the goal of ensuring no pro se litigant must go it alone on appeal.