

Nevada Pro Bono Appellate Program

The Nevada Appellate Pro Bono Program offers attorneys the opportunity to serve the appellate courts, help clients, and gain valuable experience in handling and arguing appeals in the Nevada Supreme Court and the Nevada Court of Appeals.

Because there is no constitutional right to appeal in civil cases, with an associated right to counsel, many litigants proceed without counsel and have little chance of framing important issues in the best light. In 2013, approximately 876 civil appeals were filed, with at least one unrepresented party in about half of those cases.

The Program, developed in 2013, expands the Nevada Supreme Court's previous efforts to assign certain selected pro se appeals to volunteer attorneys and, with the addition of guaranteed oral argument, offers attorneys a unique opportunity to hone their advocacy skills.

A. History

For many years, in select cases, the Nevada Supreme Court has remanded an appeal to the district court for the appointment of pro bono counsel to ensure that important issues were adequately briefed and argued. The court maintained a list of appellate experts, and when warranted, would forward the list to the district court to use to appoint an attorney to represent a pro se litigant whose appeal presented novel or thorny issues. Until recently, under the appellate rules, pro se litigants could neither file briefs nor orally argue an appeal, so appointing counsel was (and remains) an important step for fully developing the issues on appeal. As of October 2015, pro se litigants are permitted to file briefs, though they are not permitted to participate in oral argument. Notwithstanding this change to the rule of appellate procedure, the courts maintain their interest in selecting appropriate cases for possible appointment of pro bono counsel.¹

The court and the appellate legal community were interested in creating a broader and more formalized pro bono program. These efforts began to take shape in 2012 when the Appellate Litigation Section of the State Bar of Nevada and its Pro Bono Committee began to work closely with the supreme court to create a vibrant pro bono program.

¹ See NRAP 46A.

B. Nevada Appellate Pro Bono Program

The court's new Program has been expanded and restructured to involve more lawyers and more cases. The Program relies on court partners at the State Bar of Nevada (State Bar) and Legal Aid Center of Southern Nevada (Legal Aid Center) to coordinate appointments.

a. Case Selection

The court has designated a staff attorney to screen cases for the Program. In the past, the court appointed counsel to handle only cases involving significantly complex or novel issues of law. Under the new program, the court will consider appointing counsel if an appeal presents an issue of arguable merit, including error correction under existing law, or involves weighty issues, such as a modification of child custody. These standards have led to more appointments, and have significantly assisted the court's administration of justice. In the program's first full year, the court appointed counsel to represent pro se litigants in more than fifty cases involving employment, civil rights, contract disputes, foreclosure, and family law. In several child custody cases, the court appointed counsel to both parties.

b. Appointment Procedure

Once the court identifies a potential case for the Program, it enters an order directed to the Appellate Litigation Section's Pro Bono Committee, which has partnered with Legal Aid Center to administer the Program. The order is served on all parties to the case. Legal Aid Center contacts the client, assigns a volunteer attorney, and provides legal malpractice insurance. This process involves at least two, and sometimes three, key steps: client eligibility, client consent, and assignment to a volunteer attorney. Currently, the court allows approximately sixty days to complete this process.

1. Client Eligibility and Consent

Before Legal Aid Center locates a volunteer attorney, it verifies that the client is financially eligible to participate in the program and consents to representation by a volunteer attorney. Legal Aid Center contacts potential clients to educate them about the pro bono program. Once the client consents to representation, Legal Aid Center conducts an eligibility screening, if needed. Clients do not get to choose an attorney. Instead, they must agree to cooperate with the assigned volunteer.

To be eligible for the Program, the client's income must fall below specified income guidelines used to determine legal aid eligibility. In many cases, the lower court has already determined that the client is indigent and allowed to proceed *in forma pauperis*, meaning the client is excused from paying filing fees or other litigation costs. If the client is not already proceeding *in forma pauperis*, Legal Aid Center determines if the client is eligible for legal aid and, if so, prepares a statement of legal aid eligibility which has the same effect as an *in forma pauperis* finding by a court.²

2. Volunteer Assignment

Once an eligible client has consented to representation, Legal Aid Center initiates the process for locating a volunteer attorney. As a statewide program, any admitted Nevada attorney can sign up to volunteer. To get involved, interested attorneys should contact Melanie Kushnir, Pro Bono Project Director at Legal Aid Center of Southern Nevada, at probono@lacsnsn.org. Once the attorney has contacted Legal Aid Center, the attorney's email address will be added to the volunteer list. Each time a new pro bono appeal becomes available, Legal Aid Center will send an e-blast to the volunteer list. The email states the parties' names, case number, and a brief description of the issues identified by the court. This information also appears on Legal Aid Center's Pro Bono Project website (www.lacsnsnprobono.org)³ Volunteers are not bound by the court's description of the issues, which is drafted solely for the purpose of facilitating the appointment of counsel.

Legal Aid Center then matches the appeal to one of the volunteers who has expressed interest. Volunteers do not need to be experienced at handling the specific subject matter of the appeals in order to volunteer. Legal Aid Center, working with the Appellate Litigation Section's Pro Bono Committee, will work to ensure that attorneys without subject matter or appellate experience have access to such expertise at their firm or through an assigned mentor.

² See NRS 12.015. Parties deemed indigent under NRS 12.015 are entitled to waiver of filing fees, and may be entitled to recordings or reported transcripts of the proceedings at reduced or no cost. For cases included in the pro bono program, the trial court record is accessible to counsel of record through counsel's supreme court e-filing account.

³ The Legal Aid Center lists available pro bono appellate cases at: <http://www.lacsnsnprobono.org/available-cases>.

Attorneys interested in taking an appeal must perform a conflicts check before accepting the appeal. In most cases, this process will be very quick. For some attorneys, completing a conflicts check and getting firm permission to accept the appeal may take several days. In such circumstances, volunteers may express their interest to Legal Aid Center, request time to clear acceptance of the case, and expedite that review process. In the meantime, Legal Aid Center will collect names of other interested attorneys if the first attorney is unable to accept the case.

3. Notice of Appearance, Scheduling, Record

Once the volunteer has accepted the case, the attorney must enter a notice of appearance with the supreme court or court of appeals and file the “Statement of Legal Aid Eligibility,” if applicable. The supreme court clerk’s office will then set a briefing schedule, including directions for ordering any necessary transcripts. In most cases, the court will have already ordered transmission of the district court record and that record may be cited to instead of an appendix. Though oral argument is guaranteed, it is not required, and the attorney may file a request to opt out of argument if he or she determines that argument is not warranted. Any order scheduling argument and indicating the amount of argument time will be set by the court after the briefing is completed.

c. Additional Resources

The Appellate Litigation Section supports the Nevada Appellate Pro Bono Program with additional resources, including FAQs, sample briefs, forms, and mentoring at the briefing and/or oral argument stages. As an example, the Section’s lawyers have set up pre-argument moot court sessions for volunteer lawyers to prepare for the oral argument, with experienced practitioners acting as moot court judges.

To get involved, interested attorneys should contact Melanie Kushnir, Pro Bono Project Director at Legal Aid Center of Southern Nevada, at probono@lacsno.org.